

FEB 13 2004

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ELOUISE PEPION COBELL, et al.,

Plaintiffs-Appellees,

v.

GALE A. NORTON,
Secretary of the Interior, et al.,

Defendants-Appellants.

No. 03-5262

**NOTICE OF SCHEDULING MOTION FILED
IN RELATED CASE NO. 03-5314**

Defendants-appellants, Gale Norton, Secretary of the Interior, et al., wish to draw to the Court's attention the emergency motion for expedited briefing filed in the related appeal, Cobell v. Norton, No. 03-5314. We make this filing because we believe it would be appropriate for both appeals to be considered on the same schedule if possible.

In this appeal, No. 03-5262, the government seeks review of the district court's preliminary injunction that asserts broad judicial control over Interior's connection to the internet. In No. 03-5314, the government seeks review of a far-reaching "structural injunction" encompassing a broad variety of matters related to the management of Individual Indian Money accounts. The government's challenge to both injunctions involves the same legal and factual background, and the injunctions are defective for many of the same reasons. Indeed, the internet injunction could easily have been included as one of the many disparate requirements contained in the structural injunction.

Although this Court denied the government's motion to consolidate the two appeals, we respectfully suggest that the two cases should be heard on the same schedule if possible. Accordingly, in our response to plaintiffs' motion for expedition in No. 03-5314, we have urged that if expedition is granted in that appeal, the Court should expedite the briefing of this appeal as well. Conversely, if the

Court determines not to expedite the structural injunction appeal, it should also defer scheduling of this appeal.¹

Respectfully submitted,

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¹ We note that the government has filed several submissions with the district court pursuant to the preliminary injunction order which are now pending before the court. If the district court takes further adverse action after consideration of these submissions, expedition of this appeal may become necessary regardless of the scheduling of the structural injunction appeal.

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of February, 2004, I am causing copies of the foregoing notice to be sent to the Court by hand delivery and to be served on the following counsel by first class mail and by fax:


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